

APPEAL NO. 041372
FILED JULY 29, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 6, 2004. The hearing officer decided that the appellant's (claimant herein) compensable injury of _____, does not include the claimant's right ankle problems after November 8, 2003. The claimant appeals the decision of the hearing officer and the respondent (carrier herein) replies that the decision should be affirmed.

DECISION

We reverse the decision of the hearing officer and a new decision is rendered that the claimant is entitled to all health care reasonably required by the nature of his injury as and when needed.

The facts of this case are largely undisputed. On _____, the claimant sustained a compensable injury to his right ankle and underwent surgery for his injury. On October 20, 2003, the claimant underwent surgical repair of his Achilles tendon, and the carrier covered this surgery as part of the claimant's compensable injury. Shortly after the surgery the claimant removed his cast. The claimant again underwent Achilles tendon repair surgery on November 5, 2003. The claimant again removed his cast shortly after surgery. The claimant argues that he had to remove his casts because his ankle was bleeding and he had to remove the casts to stop the bleeding. The carrier contends that the removal of the casts constituted noncompliance with medical care relieving it from further liability for the treatment of the claimant's right ankle. In her decision the hearing officer decided that the carrier was not liable for medical benefits for the claimant's right ankle after November 8, 2003.

We find that the hearing officer's decision constitutes clear legal error. There is no provision in the 1989 Act for a hearing officer to end a claimant's right to medical benefits for a compensable injury due to noncompliance with medical treatment. In its response to the claimant's appeal the carrier cites to no statutory or rule provision that would permit a hearing officer to do this. The carrier does cite to two Appeals Panel decisions—Texas Workers' Compensation Commission Appeal No. 94257, decided April 18, 1994, and Texas Workers' Compensation Commission Appeal No. 960574, decided May 3, 1996.

We do not find that either of these cases hold that a hearing officer can cut off medical benefits for noncompliance with medical treatment. In Appeal No. 960574, *supra*, we affirmed the decision of a hearing officer that a beneficiary was entitled to death benefits because the claimant died as a result of a mixed drug overdose as a result of drugs prescribed for his compensable injury. In Appeal No. 94257, *supra*, we affirmed a hearing officer who found that a compensable injury to the claimant's right hand did not extend to her neck. That case hinged upon whether or not the claimant's

neck condition naturally resulted from medical treatment for her hand injury. That is quite different from the present case where the claimant is not claiming his original injury extends to another body part, but where the hearing officer is cutting off medical benefits for his right ankle, which was undisputedly the body part injured in his compensable injury.

The present case is more akin to Texas Workers' Compensation Commission Appeal No. 011447, decided August 10, 2001, where we said that the hearing officer exceeded his authority by ending medical benefits based upon his finding that the claimant no longer suffered from the effects of her compensable injury. We stated as follows in that case:

We caution however that the decision of the hearing officer not be overread. We have repeatedly held that a claimant may go in and out of disability and that a hearing officer does not have the authority to determine the issue of disability beyond the date of the CCH. Texas Workers' Compensation Commission Appeal No. 931049, decided December 31, 1993. Similarly, a claimant's need for medical care for a compensable injury may ebb and flow. Pursuant to Section 408.021(a) an injured employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. There is no authority under the 1989 Act for a hearing officer to end a claimant's right to future medical benefits for treatment of the compensable injury during the lifetime of the claimant. Issues and findings dealing with the extent of an injury and with disability far more clearly delineate the issues within the purview of a hearing officer's than issues framed in terms of whether or not the claimant continues to suffer from the "effects" of an injury. Efforts by benefit review officers and hearing officers to keep the issues within the channels of the hearing officers' authority are more likely to facilitate the orderly resolution of benefit disputes.

We must reverse the hearing officer's decision in the present case because she simply was not authorized by the 1989 Act to end the claimant's medical benefits for his compensable injury. Texas Workers' Compensation Commission Appeal No. 031260-s, decided July 3, 2003. Nor does the Appeals Panel have the power to confer her with the authority to do this. See Rodriguez v. Service Lloyds Insurance Company, 997 S.W.2d 248 (1998). Based upon the language of Section 408.021(a), we render a new decision that the claimant is entitled to all health care reasonably required by the nature of his injury as and when needed.

The decision and order of the hearing officer are reversed and a new decision is rendered.

The true corporate name of the insurance carrier is **BIRMINGHAM FIRE INSURANCE COMPANY OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701-2554.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Edward Vilano
Appeals Judge